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(2)

CASE NO. 84-1463

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MARY WILSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SECOND DISTRICT COURT OF APPEALS STATE OF FLORIDA

JIM SMITH
ATTORNEY GENERAL

GERALD B. CURINGTON
Assistant Attorney General
Counsel of Record for Respondent

DEAN C. KOWALCHYK
Assistant Attorney General

Department of Legal Affairs
The Capitol, Suite 1501
Tallahassee, Florida 32301
(904) 488-1573

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PREFACE

The only document referenced herein is the opinion of the court below, which is also reported at 453 So.2d 413 (Fla. App. 1984). This opinion is reprinted as Petitioner's Appendix A. For the convenience of the Court, references to that opinion will be made to the Petitioner's Appendix.

JURISDICTION

Jurisdiction is alleged by Petitioner pursuant to 28 U.S.C. §1257(3). Respondent denies that jurisdiciton is properly alleged.

A. TIMELINESS

Petitioner's motion is untimely because the pursuit of discretionary jurisdiction in the Florida Supreme Court was a sham. As will be discussed more fully below, the

instant cause was decided by the Florida Second District Court of Appeal (hereinafter "the Second District") on state procedural grounds independent of any federal question presented. Petitioner attempted to invoke the discretionary jurisdiction of the Florida Supreme Court pursuant to Fla. R. App. P. 9.030(2), which states that:

> . . . The discretionary jurisdiction of the Supreme Court may be sought to review:
>
> (A) decisions of district courts of appeal that:
>
> (i) expressly declare valid a state statute;
>
> (ii) expressly construe a provision of the state or federal constitution . . .

The order of the Second District states in relevant part that:

> . . . We decline to address the constitutional argument presented by appellant because we find that there was available to appellant another remedy by which to get a

> hearing on her need for placement
> . . .

Petitioner's Appendix at A-4. The opinion of the Second District does not rule on the validity of Florida's involuntary mental health hospitalization statutes, and further does not rule on a federal constitutional question. The Second District made its ruling on procedural grounds:

> . . . Thus, by filing a petition pursuant to section 394.467(2)(b) (Fla.Stat. 1982) in the proper county, appellant could have had the hearing she requested. Appellant did not do so, and we affirm . . .

Petitioner's Appendix at A-5.(statutory identification added).

Clearly, Petitioner's attempt to invoke the discretionary jurisdiction of the Florida Supreme Court was, at best, misguided. Petitioner should not now be allowed to use a totally meritless attempt

at discretionary review to toll the time for petitioning herein.

B. FEDERAL QUESTION

Respondent admits that issues of federal constitutional law were presented on appeal in this cause. However, as noted above, and as will be further discussed below, the case was decided by the Second District on state law procedural grounds. The procedure referenced by the court was not challenged by Petitioner below. Thus, while a federal question was presented below, the Second District did not reach the federal question, because adequate independent state grounds made the determination of the federal question unnecessary.[1] This Petition should be

[1] In Singletary v. State, 322 So.2d 551,552 (Fla. 1975), the Florida Supreme Court held that Florida courts should refrain from deciding cases on
[cont'd on next page]

denied because it does not present a federal question. Certiorari herein would amount to a review of a State decision regarding state procedure.

STATEMENT OF THE CASE

Respondent adopts Petitioner's statement of the case, with the following exceptions:

1) The record does not reflect a judicial determination that the witness to Petitioner's waiver cannot be identified.

2) The record does not reflect that the doctor who certified Petitioner's waiver cannot be identified.

3) The record contains no evidence that Petitioner was retarded, rather than mentally ill.

4) The record does not reflect that

---

constitutional grounds whenever non-constitutional issues are dispositive.

Petitioner does not recall waiving her right to hearing.

5) The record does not reflect that the admission director of the State hospital made a determination that Respondent was not mentally ill.

6) The record does not reflect that Petitioner's Second Motion to Vacate was "never heard". The record does reflect that the motion was ruled upon.

SUMMARY OF ARGUMENT

Certiorari review of this cause should be denied because the opinion of the lower court was based upon adequate independent state grounds.

CERTIORARI SHOULD BE DENIED

Petitioner was the subject of an involuntary mental health commitment

proceeding, pursuant to Chapter 394, Fla. Stat. (1982), which is also known as the "Baker Act." Petitioner seeks the certiorari review by this Court of the affirmance of the denial of a Motion to Vacate the order of involuntary mental health commitment. The Baker Act contains provisons for a hearing for those who oppose involuntary commitment. The act also provides, in §394.467(2)(a), Fla. Stat., (1983) that the hearing can be waived by "express and informed consent". Petitioner alleges that it was error for the Second District to affirm an order denying a Motion to Vacate because the statute improperly allowed her to waive her right to hearing. She offers as proof the allegation that she is mentally retarded, rather than mentally ill, and she admits that the facts which would support this allegation are not in the record. Her

counsel asserts that the State of Florida should be "estopped" from arguing that this Court's review should be restricted to the record because the inability to present them "is the very evil of which the Petitioner complains."[2]

---

[2]The State of Florida also has an evil to complain of. That evil is the failure of counsel for Petitioner to make use of the procedures available within the Baker Act. The Second District affirmed the denial of Petitioner's Second Motion to Vacate because it was not properly filed. That court noted that:

> . . . section 394.467(2)(b) provides that a person who has waived a hearing, or his guardian or representative, may apply for a hearing on the need for involuntary placement at any time within six months of the date of the involuntary placement certificate . . . under section 394.467(4) a patient may request a hearing at six-month intervals if continued placement is requested by the administrator of the hospital facility. For this additional reason appellant has had the opportunity to have a hearing on the need for her involuntary placement.

Pet. App. at 4-5.

Even assuming, arguendo, that

[cont'd on next page]

This Court should decline to review the decision of the Second District because that decision does not present a federal question. In Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), the Court stated that:

> . . . Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, has been the cornerstone of this Court's refusal to decide cases where there is an adequate and independent state ground . . .

103 S.Ct. at 3475; see also: Dept. of Mental Hygiene Cal. v. Kirchner, 380 U.S. 194, 85 S.Ct. 871, 13 L.Ed.2d 753 (1965).

The opinion of the Second District

Petitioner's counsel was unaware of the provisions of 394.467(2)(b) and 394.467(4) prior to the order of the Second District, he certainly should have become aware of them on or about June 15, 1984. Since that time, Counsel has had 4 opportunities to make use of 394.467(4). It is Petitioner, not the state, who should be estopped from presenting evidence not in the record where she has refused to avail herself of the opportunity to build a record.

occupies a scant five pages of Petitioner's appendix. The substance of that order is as follows:

> We decline to address the constitutional argument presented by appellant because we find that there was available to appellant another remedy by which to get a hearing on her need for placement. See Singletary v. State, 322 So.2d 551, 552 (Fla.1975) . . . by filing a petition pursuant to section 394.467(2)(b) (Fla. Stat. 1982) in the proper county, appellant could have had the hearing she requested. Appellant did not do so, and we affirm the denial of appellant's motion.

Pet. App. at 4-5.(statutory identification added). Where the state court can decide the matter on the basis of adequate and independent state grounds, and does so, any judgment by this court on the wisdom of that ruling would be, at best, an advisory opinion. The court below expressly declined to render a federal constitutional ruling because it was able to decide the

matter on the basis of unchallenged state procedural law. This court should decline to review that decision because it does not present a federal question.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that certiorari review of this cause be denied.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

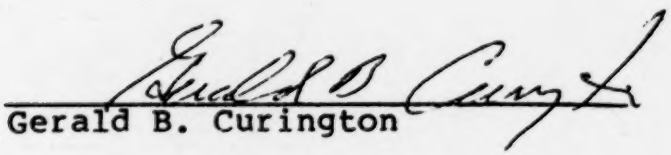
Gerald B. Curington
Assistant Attorney General
Counsel of Record
for Respondent

Dean C. Kowalchyk
Assistant Attorney General

Department of Legal Affairs
The Capitol - Suite 1501
Tallahassee, Florida 32301
(904) 488-1573

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing were served, via U.S. mail, on GARY G. GRAHAM, P.O. Box 519, Inverness, Florida 32651, this 30th day of May, 1985.



Gerald B. Curington